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### ADVISORY SERVICES AND TECHNICAL COOPERATION IN THE FIELD OF HUMAN RIGHTS

**Report of the independent expert on the situation of human rights in Afghanistan,  
M. Cherif Bassiouni**

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## **Summary**

Since his appointment in April 2004, the independent expert has conducted two missions to Afghanistan, conducted extensive research and engaged in a broad array of consultations. The independent expert welcomes progress made in the protection of human rights and the development of national capacity as well as the commitment of the Government to implement policies that respect human rights norms, despite limited resources. However, he draws attention to an array of continuing violations including: repressive acts by factional commanders; arbitrary arrest and other violations by State security forces, including intelligence entities; unregulated activities of private security contractors; severe threats to human rights posed by the expanding illegal drug industry; sub-standard conditions in prisons; egregious violations of women's rights by the State and as related to an array of social practices; abuses linked to customary law decisions; violations of children's rights; inadequate attention to the disabled; land claims and other issues faced by returning refugees and IDPs; and arbitrary arrest, illegal detentions and abuses committed by the United States-led Coalition forces.

The independent expert welcomes recent developments regarding a national transitional justice strategy, including activities of the United Nations High Commissioner for Human Rights and the Government's acceptance of a report by the Afghan Independent Human Rights Commission. The removal of factional commanders and individuals associated with past human rights violations from positions of public authority must be a key government priority. The independent expert calls on the Government to work with the international community to design and implement a comprehensive strategic plan regarding the rule of law, justice and human rights focusing on reforms in the administration of justice, actions to combat the illicit drug trade, and anti-corruption policies. He suggests the formation of an interdisciplinary organization to develop and implement this process composed of government officials, the United Nations Assistance Mission in Afghanistan, other United Nations agencies, international experts, and representatives of donor countries.

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## Introduction

1. This report contains observations by the independent expert regarding the current human rights situation in Afghanistan and issues related to capacity-building and strategies to promote the rule of law, protect human rights and prevent future violations. The report is prepared pursuant to the mandate established by the Commission on Human Rights in resolution 2003/77 and renewed by the Commission at its sixtieth session. The report documents and analyses the human rights situation and human rights technical assistance programmes as outlined by the General Assembly at its fifty-ninth session and the Commission on Human Rights at its sixtieth session.

2. The independent expert was appointed by the Secretary-General in April 2004, and submitted a statement to the Commission on Human Rights at its sixtieth session (E/CN.4/2004/102/Add.1, annex). He held consultations in Geneva in April 2004 with representatives of Governments, intergovernmental organizations (IGOs) and non-governmental organizations (NGOs). Between April and August, he examined United Nations documents and other reports, and from 14 to 22 August 2004, undertook a country mission, involving extensive consultations with government officials, representatives of the international community and others. The result of this work is detailed in his report to the General Assembly at its fifty-ninth session (A/59/370).

3. The independent expert continued his inquiries into the human rights situation in Afghanistan from September 2004 through January 2005, by reviewing reports, conducting research and analysis, and consulting with the Office of the United Nations High Commissioner for Human Rights (OHCHR), the United Nations Assistance Mission in Afghanistan (UNAMA), other United Nations agencies, the European Union (EU), various government representatives, international and domestic NGOs, and key international experts. Between 30 January and 7 February 2005, the independent expert returned to Afghanistan, holding consultations and meetings with senior government officials, including the President, Hamid Karzai, the Foreign Minister, Abdullah Abdullah, the Minister of Justice, Sarwar Danish, Chief Justice Shinwari and others. He met with members and staff of the Afghan Independent Human Rights Commission (AIHRC) and representatives of the United States of America and States members of the EU, the EU special representative, and others. The independent expert also met with UNAMA staff, including Jean Arnault, the Special Representative of the Secretary-General for Afghanistan, the Deputy Special Representative and the Head of the Human Rights Unit, as well as various United Nations agencies operating in the country, including the United Nations Development Programme (UNDP), the United Nations Office on Drugs and Crime (UNODC), and the Office of the United Nations High Commissioner for Refugees (UNHCR). In addition, meetings were held with the Human Rights Advisory Group, domestic and international NGOs, organizations involved in rule of law projects, individual experts, and Afghan victims of human rights violations.

4. The independent expert recognizes the goodwill of the Government and its commitment to creating policies that respect human rights norms and standards, despite limited resources. There are relatively few sectors where the independent expert found resistance to his mission or a lack of interest in open, productive discussions regarding the development of policies to respect and protect human rights in Afghanistan. However, the independent expert was unable to gain access to detention facilities controlled by the Coalition forces and had difficulty obtaining clear

information from government security and intelligence entities, including those associated with the National Security Directorate, the Ministry of Defence, and the Ministry of the Interior. While the independent expert recognizes the importance of national security, he draws attention to allegations that the Coalition forces and special units of the Afghan security agencies and police act above and beyond the reach of the law by engaging in arbitrary arrests and detentions and committing abusive practices, including torture. The independent expert has received testimony from former detainees about such abuses and has communicated his concerns to officials of the Governments of Afghanistan and the United States of America.

5. It is important to recognize that in the short time between the first and second visits, there have been a number of positive developments in Afghanistan. Of special note are advances in the nation's democratic process, as seen in the successful presidential election of 9 October 2004. In addition, the economy has grown steadily, many reconstruction programmes show signs of success, and large numbers of Afghans have returned to the country. Afghanistan benefits from a sense of hope and new possibilities. However, the country's future depends on strengthening the rule of law, improving the administration of justice, and promoting and protecting human rights, a process which requires the development and implementation of a comprehensive strategic plan.

6. As the independent expert outlined in his previous report, the human rights situation in Afghanistan involves a wide range of issues, including: past and present violations committed by State and non-State actors; arbitrary arrest; torture; inhuman conditions of detention; absence of due process and other key legal protections; illegal seizure of private property; significant and widespread violations of women's rights, including violence against women, restrictions on movement and institutionalized inequity; child abduction and trafficking; systematic violations of social and economic rights; and a wide variety of abuses committed against weaker elements of society, such as minorities, returning refugees, internally displaced persons (IDPs), women, children, the poor, and the disabled. Due to limitations on space, this report is unable to adequately address all of these issues, despite their significance.

7. In his first report the independent expert made a series of recommendations. Some of these have been carried out, others are in the process of being implemented, and still others have yet to be addressed. The independent expert congratulates the Government for a number of positive actions including the release, based on his urgings, of some 730 individuals, sometimes referred to as the "Shibergan detainees", who were illegally held in inhuman conditions for over 30 months.

8. The independent expert draws attention to a number of pressing human rights issues that demand the immediate attention of the Government and the international community, including:

- (a) The continued power and influence of factional commanders<sup>1</sup> involved in illegal land seizures, extortion and intimidation;
- (b) Arbitrary arrest and routine violations of the administration of justice by the Afghan National Police (ANP);

(c) The absence of due process in the arrest and detention of persons and the use of torture by various government intelligence entities, including those associated with the National Security Directorate, the Ministry of Defence and the Ministry of the Interior;

(d) Unregulated activities of private security contractors who have been associated with a variety of human rights violations;

(e) Severe threats to national security and the protection and promotion of human rights posed by the rapidly expanding illegal drug industry, which fuels corruption and provides significant economic power to factional commanders and others;

(f) Conditions in prisons, particularly with regard to women and children, which violate the United Nations Standard Minimum Rules for the Treatment of Prisoners and other human rights instruments. While some improvements have been made at Pol-e Charkhi since the last visit, other detention facilities display appalling conditions that demand immediate attention;

(g) Egregious violations of women's human rights including improper arrest and detention, violations of due process rights, severe limitations on women's access to justice, and high levels of violence against women, especially domestic violence;

(h) Elements of customary law that represent human rights violations, including the continued practise of private detentions as punishment for women and the transfer of women through forced marriages as compensation for killings;

(i) Trafficking in children, abusive child labour and other violations of children's human rights;

(j) Inadequate attention, services, and rights for the disabled;

(k) Problems faced by returning refugees and IDPs related to land claims, institutional corruption, abuse and violence, often at the hands of factional commanders;

(l) Actions by United States-led Coalition forces that appear to be unregulated by a Status of Forces Agreement (SOFA), including arbitrary detentions under conditions commonly described as constituting gross violations of human rights law and grave breaches of international humanitarian law.

9. Afghanistan is currently engaged in a complex process of national reconstruction and development following more than 23 years of sustained and highly destructive conflict within a general context of extreme poverty, limited resources and stagnated development. The initial phase of democratic transition is coming to a close with significant advances in nation-building, a new constitution, the presidential elections, the establishment of a national human rights institution, upcoming parliamentary elections, and a growing overall sense of State legitimacy. However, the long-term success of the country's political transition requires significant and immediate attention to the rule of law, justice and human rights in order to assist Afghan society in processing claims and disputes, addressing past atrocities, preventing future violations, and enabling the State to consolidate its role as the primary guarantor of security, stability and fundamental rights.

## I. COMPREHENSIVE STRATEGIC PLAN FOR RULE OF LAW, JUSTICE AND HUMAN RIGHTS

10. The independent expert draws attention to Afghanistan's lack of a comprehensive strategic plan regarding rule of law, justice and human rights, all of which are fundamentally interrelated. While there are a number of successful justice sector projects, the current disconnected, ad hoc approach is insufficient for responding to the needs of the Afghan people or integrating legitimate legal processes within the process of national reconstruction. In addition, new patterns of impunity for human rights violators are emerging and must be addressed. Afghanistan requires a coordinated, interdisciplinary strategy involving three fundamental elements - reforms in the administration of justice to create effective institutions staffed by capable professionals to defend and protect fundamental legal rights, including openly facing violations of the past; immediate actions to combat poppy cultivation, processing and trafficking to reduce threats to stability, security and the legal order, especially by factional commanders increasingly involved in organized crime; and anti-corruption policies to aid the State in consolidating its role as a unifying power that effectively governs through the fair and equitable application of law.

11. Creating a comprehensive rule of law, justice and human rights strategy is a complex, costly, challenging, yet necessary undertaking. The independent expert suggests the formation of a new interdisciplinary organization to oversee the development and implementation of this strategy. This body should be composed of senior government officials, high-level representatives of UNAMA and other United Nations agencies, global rule of law, anti-drug and anti-corruption experts, key representatives of donor countries, and others.

12. Afghanistan is currently experiencing a justice deficit at almost every level of society. The failure to build institutions and mechanisms that support claims for justice threatens the nation's stability and security by undermining confidence and public trust in the State. Improving rule of law and the administration of justice requires significant and coordinated investments in the legal system, including institutional reform; new and refurbished infrastructure; professional training for judges, prosecutors and staff; public defender programmes; increased access to justice for women, youth, the poor, minorities and other disempowered members of society; and the implementation of public education and awareness programmes. This process also requires the integration of customary law, which is used by the majority of the population in many regions of the country, into formal legal processes. In addition, a comprehensive strategy should develop transitional justice policies, particularly vetting candidates for public office (through a special unit within the Civil Service Commission or a newly created entity), truth-seeking mechanisms, and the establishment of a political climate that respects victims' demands and addresses past atrocities to build for the future.

13. As discussed in the independent expert's previous report, poppy cultivation, heroin manufacturing and its international trafficking represent one of the most significant threats to security and rule of law in Afghanistan. This danger is compounded by indications that factional commanders and others are increasingly engaged in this industry, linking well-armed groups, criminal practices and significant financial resources in a manner that presents serious implications for human rights and for the security and stability of the nation. The drug industry is rapidly expanding in Afghanistan, which is currently the world's largest producer of opium.

The enormous financial interests associated with poppy cultivation and drug trafficking support armed organizations, encourage institutional corruption, and threaten the capacity of the State to enforce laws and control its national territory.

14. The independent expert has received credible reports of corruption throughout the country and at various levels of Government. The problem appears particularly serious among the police and the judiciary, creating low levels of public confidence that negatively impact the operation and legitimacy of the State. Poorly coordinated justice institutions, low wages and related problems contribute to corruption, as does the financial and political power of factional commanders and those involved in the drug industry. If corruption continues to intensify, as is likely with the growing power of drug traffickers and organized crime, it will become virtually impossible to establish and sustain a meaningful commitment to rule of law in Afghanistan. The independent expert urges the creation of a series of mechanisms and policies to reduce government corruption, especially within legal and law enforcement institutions. These include improved salaries and working conditions, continued capacity-building and enhanced recruitment standards, as well as the creation of special anti-corruption task forces similar to those successfully implemented in other countries. In addition, the Government should implement internal control mechanisms to encourage transparency, public access and accountability, in line with basic principles of good governance.

## II. SECURITY

15. Afghanistan has achieved relative national stability, which represents a major political accomplishment and provides a necessary foundation for reconstruction and development. However, a number of threats to national security exist, including: the continued power of factional commanders; the presence of large numbers of weapons; the activities of illegally armed groups; actions by anti-Coalition and anti-Government forces; unregulated and disconnected Afghan security and intelligence institutions; key deficits within the National Police; and the growing role of unregulated private security contractors. Security sector reform is a key priority within the process of national reconstruction and while there has been substantial progress in many areas, there is a need for expanded policies to consolidate security gains and protect the nation against new threats.

16. *Factional commanders.* After decades of armed conflict, Afghanistan continues to be affected by factional commanders. The power of these commanders varies, yet they generally exist outside of, and are often opposed to, formal State systems, partly because their authority is bound to local power structures involving ethnic and tribal allegiances. While the Government is making progress in delegitimizing and disarming some of these actors, they continue to pose a threat to national security and human rights, especially in light of their involvement in the rapidly expanding drug trade.

17. *Disarmament, demobilization and reintegration (DDR).* In his previous report, the independent expert recognized the central role of DDR as overseen by the Afghanistan New Beginnings Programme (ANBP), while also considering its relatively slow progress. Fortunately, DDR has advanced significantly and, by mid-February 2005, over 40,000 of an estimated 60,000 members of the Afghan military forces had engaged in some aspect of the process. The independent expert welcomes progress in these areas, particularly the demobilization of child soldiers and the recent cantonment of heavy weapons from northern

Afghanistan. However, some factional commanders threaten soldiers seeking to enter DDR programmes and continue to exercise control over demobilized forces now operating within the ANP and the Afghan National Army (ANA). The demilitarization of Afghan society cannot be achieved without effective reintegration programmes. For this reason, increased attention should be focused on former combatants who are currently offered little more than short-term vocational training. Disarmament must be viewed in the wider context of creating viable community economic and social development, possibly by recruiting former combatants into labour-intensive infrastructure projects such as those associated with the National Priority Programmes. In addition, the DDR process never addressed illegally armed groups, the estimated 80,000 armed forces not formally recognized by the Afghan military that operate outside the chain of command and control of the central Government. They are responsible for a variety of serious human rights abuses, including land seizure, illegal taxation and arbitrary detention in private prisons. As DDR reduces the size of the Afghan military, these groups may exploit the resulting power vacuum and exert greater influence. Currently, there is a joint planning group to collect and analyse data on these groups. The independent expert welcomes this development and highlights the need to disarm and disband the illegally armed groups alongside the deployment of increased international forces, supported by expanded donor funding and in close coordination with Afghan security forces.

18. *International Security Assistance Force and the North Atlantic Treaty Organization.* ISAF is a NATO-led multinational force of over 8,300 troops from 36 countries, created to support domestic security. ISAF was originally based in Kabul and has extended operations to the northern provinces of Mazar-i-Sharif, Karyab, Badakhshan, Kunduz, and Baghlan. Recently, NATO ministers have agreed to increase the size of the force and establish a presence in western Afghanistan. The independent expert welcomes these necessary increases in force strength, noting that the mission should increasingly acquire a law enforcement character now that major military threats have been reduced.

19. *Afghan security institutions.* Attention has been focused on improving national security institutions, especially ANA and ANP. These organizations are indispensable for national security and the protection and promotion of basic human rights. Their potential success is undermined by inadequately trained forces, low salaries, recruitment and promotion based on connections rather than professional qualifications, corruption and other factors that contribute to inefficient command and control. ANP also suffers from the retention of officers previously associated with factional commanders and others implicated in past human rights violations. Over 3,200 police officers have received substantial training including significant human rights elements through programmes developed by the Government of Germany. In contrast, United States-sponsored training programmes are relatively short in duration and provide significantly less overall preparation. The independent expert notes that there are multiple security institutions managed by the National Security Directorate, the Ministry of the Interior and the Ministry of Defence, which function in an uncoordinated manner, lack central control and have no clear mechanisms of formal accountability. The independent expert has received complaints regarding serious human rights violations committed by representatives of these institutions, including arbitrary arrest, illegal detention and torture. He draws attention to the Kakchul case, in which an individual was detained, allegedly tortured and died in custody in November 2004 and which requires a thorough, transparent and public investigation.

20. *Private security contractors.* Coalition forces, international contractors and others hire private security contractors for an array of activities, including managing security sector training and providing anti-narcotics services. These for-profit companies and their agents are often provided with exceptional powers and responsibilities while remaining unregulated by specific legislation, registration requirements, or other mechanisms of accountability. The independent expert has received credible accounts suggesting that agents of PSC have committed human rights violations, including arbitrary arrests, illegal detentions, and torture.

21. *Anti-Coalition and anti-Government forces.* Since the last report, key aspects of the security situation have improved, especially as regards fewer actions by former Taliban, Al-Qaida sympathizers and other groups referred to as anti-Coalition or anti-Government forces. The presidential elections appear to have been a turning point in a decrease in small-scale violence by these forces, although it remains unclear whether this improved security is of a lasting nature.

22. *Mine clearance.* The independent expert congratulates the Government for its mine clearance efforts and believes the programme's success may represent a model for other human rights strategies through its integration of international legal and technical standards within a local context and its focus on Afghan control and ownership. Afghanistan is one of the world's most severely impacted nations regarding mines and unexploded ordnance (UXO). This presents serious physical dangers to the Afghan people, denies freedom of movement and prevents access to land and resources. Mine and UXO clearance began in 1989 under the auspices of the Mine Action Programme for Afghanistan (MAPA). Since the fall of the Taliban, there have been significant gains, including new domestic legislation, the creation of a comprehensive national plan to remove all mines and UXO by 2012, and government accession to the Convention on the Prohibition of the Use, Stockpiling, Production and Transfer of Anti-Personnel Mines and on Their Destruction.

### III. POPPY CULTIVATION AND DRUG TRAFFICKING

23. The independent expert believes that opium cultivation and drug trafficking represent one of the most severe threats to national security and the success of the country's political transition. According to UNODC, the opium economy is rapidly expanding and is currently estimated at US\$ 2.8 billion, or 60 per cent of the country's gross domestic product (GDP). Afghanistan accounts for 87 per cent of the world's opium production, and poppy cultivation occurs in virtually every region of the country. The opium industry overshadows legal forms of agricultural production, fuels widespread corruption and provides increasing economic power to factional commanders and other local and regional leaders. The independent expert draws attention to the fact that drug trafficking has reached a crucial moment, when well-armed factional commanders, backed by huge drug profits, have increasingly taken on the characteristics of organized crime and present a significant threat to the new State. The combination of military and economic power could lead to the domination of the country by these elements or at least an increase in their capacity to prevent the Government from operating effectively.

24. Decades of conflict destroyed traditional livelihoods and fostered a lawless environment that enabled illicit activities at a time when global heroin consumption quadrupled. While opium production reached near-record levels in 2004, it is important to note that from 1994 to 2004 the

illicit drug industry represented a significant component of the Afghan economy (with the exception of 2001 when the Taliban significantly reduced production). Despite a negative religious view of drug trafficking, the industry has become a widely accepted economic coping mechanism for large numbers of rural Afghans. Opium cultivation is the main livelihood for an estimated 350,000 rural households who often become indebted to landowners and traffickers through sharecropping arrangements and other schemes. In addition, as many as half a million rural workers are engaged in labour-intensive harvesting, often following the crop and earning wages five times greater than the market rate for other forms of employment.

25. The Government's National Drug Control Strategy is composed of five key elements - alternative livelihoods for farmers; expansion of law enforcement throughout the country; new legislation; establishment of effective law enforcement; and prevention and treatment programmes - with the unlikely goal of wholly eliminating production, consumption, and trafficking by 2012. The Government is working closely with the Government of the United Kingdom, appointed the lead agency for counter-narcotics. The Government of the United States is increasingly involved in counter-narcotics activities and recently pledged over US\$ 770 million (which has yet to be approved) to this effort. Most international funding has been allocated to a robust eradication campaign planned for 2005. While the independent expert supports a comprehensive and coordinated anti-narcotics policy, it is essential that any plan be designed to protect human rights and minimize the possible negative effect on the country's rural poor. The independent expert stresses the potential problems resulting from aggressive eradication policies, especially from aerial eradication, which poses serious health and environmental risks. Experience in other countries shows that eradication only works when linked to broad and comprehensive development. An aggressive eradication programme implemented outside of a comprehensive investment in rural development is likely to produce increased suffering among poor and indebted farmers and wage labourers. In fact, a poorly designed policy may actually support the power and authority of traffickers and factional commanders, thereby destabilizing the nation and undermining significant gains in government legitimacy. The independent expert urges the Government to develop an effective and sustainable counter-narcotics strategy linking rural development (which will be costly given the economic impact of the industry) with aggressive law enforcement, including prosecuting drug traffickers and corrupt officials. This programme should be integrated into the proposed strategic plan linking rule of law, justice and human rights.

#### **IV. THE JUSTICE SYSTEM**

26. The justice system currently suffers from severe and systematic problems related to: limited public resources; the legacy of decades of violent conflict; the absence of strong State institutions, especially in rural areas; corruption; and significant problems of basic capacity and infrastructure. While the Government has sought to address these issues, the formal justice system remains inadequate and lacks public confidence and legitimacy. The independent expert draws attention to the pressing need for broad systemic reform of the justice system as a central component of a comprehensive strategic plan regarding rule of law, justice and human rights.

27. *Administration of justice.* The administration of justice suffers from an array of problems including: lengthy pre-trial detentions that sometimes exceed the length of potential sentences; institutionalized corruption; violations of due process; severe lack of public defenders; capacity-building needs; and systematic inequities that negatively impact women, children,

minorities and others. Problems regarding the fair and impartial administration of justice are associated with a lack of political will to enforce the law, powerful patronage relationships, systemic corruption and other factors that allow politically empowered individuals and groups to circumvent their legal responsibilities. In addition, judges and others willing to uphold the rule of law are often asked to act against factional commanders and other empowered groups without being provided with adequate security.

28. *Prisons.* The independent expert continues to express concern over the conditions of formal detention in Afghanistan's national prisons. The independent expert returned to Pol-e Charkhi prison, where conditions continue to be sub-standard despite some improvements. Cells are often overcrowded, prisoners are inappropriately shackled, medical facilities are rudimentary and medical supplies and ambulance services are dangerously limited. The independent expert witnessed poor general conditions, including inadequate sanitation, open electrical wiring, and broken and missing windows during freezing temperatures.

29. Whatever problems exist at Pol-e Charkhi, the prison is in much better condition than detention facilities in other parts of the country, which authorities describe as inadequate and in need of significant repair. Prison officials stated that in 20 of 34 provinces, prisons are rented homes converted, often with limited and inadequate structural additions. The independent expert witnessed these abhorrent conditions first-hand during a visit to a detention centre in Logar. These facilities consisted of a metal shipping container buried in the ground with limited lighting and heat that housed 10 inmates, and a cramped basement with a single skylight, in which over 20 inmates were detained. Several prisoners were kept constantly shackled, a practice that appears common throughout the country. These appalling, dangerous, and overcrowded conditions demand immediate attention. It should be noted that for over a year the Government of Italy has offered to fund the construction of new prison facilities, yet the Government of Afghanistan has inexplicably been unable to identify an adequate plot of land for the project.

30. *Detention of women.* The independent expert is highly concerned about women's detention in State facilities and through the actions of customary law bodies. Women are sometimes detained in private homes as the result of decisions taken by customary law actors or forced to marry as compensation for killings, creating highly abusive situations. The independent expert has serious concerns that women are convicted on the basis of false evidence and without access to legal representation. In addition, women are often denied special detention facilities and are commonly detained with their children, often in cells that hold more children than adults. No additional food, blankets, beds or other material is provided for these children. The independent expert calls on the Government to take immediate action to address these issues.

31. *Customary law.* Currently, most Afghans, especially in rural areas, rely on customary law rather than the official legal system to resolve disputes. Any effort to create a comprehensive rule of law strategy requires an open, collaborative engagement between locally constituted systems of customary law that generally have a high degree of legitimacy and official legal structures, which tend to elicit limited respect. While customary law in Afghanistan varies widely by region, there are significant structural, procedural and conceptual similarities throughout the country, particularly as regards the reliance on respected community members not trained in civil law or Shariah and known by a variety of terms, such as tribal *qadi(s)*, *jirga* and *shura*. Decisions by customary law bodies tend to be accepted by both parties and contribute to

restoring community harmony. However, from the human rights perspective, customary law raises serious concerns regarding due process protections, the uniformity of judgement and punishment, and fundamental principles of equality, especially as regards women. The independent expert urges the creation of a special governmental body to integrate the ideas and practices of customary law into the formal activities of the State, linking the legitimacy and public trust associated with customary law with a commitment to basic human rights.

## V. SOCIAL AND ECONOMIC ISSUES

32. Afghanistan is one of the poorest countries in the world and social statistics reveal severe, often preventable, human suffering, especially for women, children, the disabled, and other vulnerable populations. According to UNDP, the country currently ranks 173 out of 178 countries on the Human Development Index. While the Government is working closely with the international community to address key health, education, labour and related issues, many serious problems remain, some of which constitute violations of economic, social and cultural rights. The severity of these violations varies widely by region and the situation is generally more troubling in rural areas. Afghanistan has one of the highest rates of under-5 mortality (nearly 1 out of 5 live births) and infant mortality (over one out of 10 live births). Life expectancy is less than 45 years - 20 years less than in neighbouring countries. Overall, Afghans face enormous problems of poverty, inequality and inadequate human security.

33. *Women.* Women in Afghanistan face a wide array of human rights violations, including high rates of poverty; severe, inadequately addressed and preventable health risks; significant political marginalization; high rates of illiteracy, especially in rural areas; violence, especially domestic violence; limited access to justice; and the inability to obtain redress of wrongs from the customary legal system. Limited access to health facilities exposes women to the risk of disease, disability and death, and the country's maternal mortality rate is one of the highest in the world. Women are systematically excluded from positions of authority and are commonly subjected to the inequitable and abusive exercise of power by State agents and institutions. Women face significant violations of basic rights within the formal legal system and through customary law practices. The independent expert draws attention to the pressing human rights needs of women throughout the country and the importance of immediately addressing these issues through comprehensive policy reform.

34. *Children.* Children in Afghanistan face an array of threats to their health, well-being and fundamental rights. The country presents some of the world's worst statistics regarding children including: high rates of infant and child mortality; unsafe living conditions; widespread child labour, often in dangerous conditions; high levels of school absence; and limited mechanisms of child protection. This situation is especially acute since nearly 60 per cent of the population is 18 years or younger, a trend that is likely to continue since Afghan women have an average of over six children. Many lack legal documents and studies show that only 6 per cent of Afghan children possess the *Tazkera* certificate that guarantees citizenship. The independent expert draws attention to the need to improve the legal, social, educational, political, health and cultural status of children in Afghanistan.

35. In his previous report, the independent expert drew attention to the problem of trafficking of children, which was also raised by AIHRC and others. Government agencies have rescued and/or intercepted children in the process of being transported for various types of work and

efforts to understand the phenomenon have revealed that most trafficking victims travel with their families' consent and commonly live with relatives abroad. Many are lured away with promises of economic benefit for themselves and their families, grounding the problem in a social context of enormous poverty, in which child labour under difficult and dangerous conditions is common. There are also allegations that children, some as young as 8 years old, are trafficked by organized networks and forced into prostitution or used as cheap labour by various employers, including arms and drug smugglers. In response to this problem, the Government has prepared the National Plan of Action to Combat Child Trafficking, which includes enacting legislation, ensuring that government actions are child-friendly, maximizing opportunities for education and capacity-building, creating social safety nets, and other mechanisms to reduce children's profound social and economic vulnerability.

36. *Education.* The long-term protection of human rights in Afghanistan requires significant advances in primary, secondary and university education. During the conflict, formal education was limited or non-existent in much of the country and during the Taliban era girls and women were forbidden to attend school. About half of men and 85 per cent of women in Afghanistan are illiterate. However, in recent years the country has seen the highest enrolment levels in Afghan history, with over half of the country's population between 7 and 12 years attending school (nationwide, two thirds of all boys and 40 per cent of girls). However, school attendance varies widely by region, with significantly lower rates in rural areas and in the south. School enrolment drops off quickly after the second grade, especially for girls. The country must continue to invest significant resources in improving public education by providing better facilities, additional teacher training, and public awareness campaigns for parents. In addition, the educational system should be used to teach human rights and enhance a culture of tolerance and respect for the rule of law.

37. *Rights of the disabled.* The disabled in Afghanistan face exceptional challenges, including difficulties accessing education, jobs, health care and social services, and disabled children rarely benefit from early interventions. Although the new Constitution provides specific protections for the disabled, the Ministry for Martyrs and the Disabled provides some aid and United Nations agencies are also working on a number of initiatives, most assistance is provided by international and domestic NGOs that provide prosthetics, wheelchairs, physical rehabilitation, occupational training and aid in social reintegration. Many of the nation's disabled are direct victims of the country's violent conflict, and it is in this context that most services were initially provided. While the number of war-related victims has steadily decreased since 2001, the general incidence of disability related to poverty continues. The independent expert urges the Government to make increased efforts to assist Afghanistan's disabled population to rebuild their lives and successfully integrate into the nation's economy and society.

38. *Refugees and IDPs.* Since 2002, UNHCR has assisted the return of nearly 2.3 million Afghans from Pakistan and 800,000 from the Islamic Republic of Iran. Nevertheless, many refugees have been unable to return home. Of an estimated 1 million IDPs, approximately 840,000 have returned to their homes, with 140,000 remaining in camps and settlements, primarily in the south, and 20,000 living in urban areas. In general, refugees and IDPs who have returned home face the same difficulties and challenges as other disempowered populations in their home communities. In some areas, factional commanders and illegal armed elements are responsible for continued human rights abuses. The overall absence of the rule of law consolidates impunity and generally prevents those whose rights have been abused from seeking

redress. Land disputes, which are common throughout the country, are compounded by the unreliability of formal records and the common existence of multiple titles for the same property. To address these issues, the Government created a Property Disputes Resolution Court based in Kabul, but this body only deals with a small fraction of cases and has been criticized for focusing primarily on claims of wealthy returnees, and lacking power and legitimacy. Inadequate infrastructure and livelihood opportunities, particularly in southern Afghanistan, remain a serious impediment to the return of many refugees.

## VI. TRANSITIONAL OR POST-CONFLICT JUSTICE

39. In the previous report, the independent expert encouraged the Government to work with civil society and the international community to open a national debate on transitional justice and design a strategy to address past atrocities as part of the general process of national reconstruction. The independent expert draws attention to the necessity of a comprehensive national strategy of transitional justice to maximize accountability for past violations, prevent and/or deter future violations, and build the foundations for a social order premised on a basic respect for fundamental human rights. It is essential that current post-conflict or transitional justice strategies be designed to complement the agenda of political stabilization, while remaining committed to key human rights principles.

40. The independent expert applauds the work of AIHRC on transitional justice, especially the national consultation on past human rights violations, whose findings were presented directly during a visit to the central offices and are summarized in the report entitled "A Call for Justice". This study provides useful insights into the impact of violence on the Afghan people and documents public interest in specific transitional justice strategies. Alongside the obvious policy value of this document, the independent expert draws attention to the importance of consulting the Afghan people on the development of policies that have a direct impact on their lives and the future of the country. The national consultation found that 69 per cent of respondents identified themselves or their immediate families as direct victims of serious human rights violations. Respondents reported that violations had been committed at all stages of the 23-year-long conflict by a variety of forces that commonly acted in an arbitrary and abusive manner. The vast majority of respondents believed that bringing perpetrators to justice would increase national stability and security, and 90 per cent wanted to see the perpetrators removed from positions of official authority. AIHRC presented a series of specific policy recommendations regarding vetting, the establishment of a special prosecutor's office and a special chamber to take legal action against those responsible for atrocities, truth-seeking, reparations, and various civil society initiatives.

41. OHCHR produced a report based on publicly available information documenting gross violations of human rights committed during the country's armed conflict. This undertaking, known as the "mapping exercise", resulted in a report that was hand-delivered by the United Nations High Commissioner for Human Rights to President Karzai. AIHRC and OHCHR reports provide the Government with a valuable foundation for developing a national strategy on transitional justice. While the independent expert recognizes the significance of current security concerns and continued political uncertainty, it is essential that the Government engage in an open process of facing past atrocities and seeking public accountability, including the consideration of vetting, prosecutions, truth-seeking measures and reparations.

## **VII. ELECTIONS**

42. Elections play a central role in national reconstruction and the establishment of a functioning, stable and legitimate system of democratic governance. The independent expert congratulates the people of Afghanistan, the Transitional Government and the international community for the successful presidential elections that took place on 9 October 2004. The electoral process was managed by the Joint Electoral Management Body, specially created to help draft the electoral law, coordinate civic education, register over 10.5 million voters (roughly 40 per cent of whom were women) and supervise the elections. Parliamentary elections are set for sometime after April 2005 and will fill 249 seats in the *Wolesi Jirga* (House of the People) and seats in the Provincial and District Councils and the *Meshrano Jirga* (House of Elders), which is composed of members appointed equally by the Provincial Councils, the District Councils and the President. Significant measures have been implemented to ensure representation by women and the invalidation of candidates who are backed by armed organizations, former criminals, or perpetrators of human rights violations. While the October election was as successful as could have been expected, the process revealed a number of important trends including wide regional variations in women's participation and strong ethnically oriented voting. To ensure successful parliamentary elections, it is essential that the Government work closely with the international community to: provide adequate staff capacity and advance preparation; quickly resolve outstanding issues such as population determination and adjustments to the electoral process; closely coordinate the activities of ISAF, the Coalition forces, ANA and ANP to ensure adequate security; and engage in a broad process of public education regarding the voting process and the parliamentary system.

## **VIII. COALITION FORCES**

43. In the interim report, the independent expert highlighted the special role of the Coalition forces as a role model for managing security issues and militarized authority in Afghanistan.<sup>2</sup> When these forces directly engage in practices that violate or ignore international human rights and international humanitarian law, they undermine the national project of establishing a legal basis for the use of force. The impact of abusive practices and the failure to rectify potential problems create a dangerous and negative political environment that threatens the success of the peace process and overall national reconstruction. The independent expert welcomes reports of an improved awareness among senior officers of past problems as well as general improvements regarding arrests, searches and seizure and troop conduct. However, an array of problems still exist, including the continuing refusal to allow the independent expert, four United Nations special rapporteurs and key domestic organizations such as AIHRC to inspect Coalition forces' facilities.

44. The independent expert has received reports of serious violations by the Coalition forces from victims, AIHRC, NGOs and others. These acts include forced entry into homes, arrest and detention of nationals and foreigners without legal authority or judicial review, sometimes for extended periods of time, forced nudity, hooding and sensory deprivation, sleep and food deprivation, forced squatting and standing for long periods of time in stress positions, sexual abuse, beatings, torture, and use of force resulting in death. While it is difficult to confirm many of these allegations, a number of incidents have been publicly reported. Of particular

significance are the cases of eight prisoners who have died while in United States custody in Afghanistan.<sup>3</sup> The independent expert highlights the importance of immediately investigating these and other cases.

45. Coalition forces - and, reportedly, PSC - detain individuals at American bases at Bagram, Kandahar and outposts, and are believed to hold individuals at a number of additional undisclosed locations. International NGOs estimate that over 1,000 individuals have been detained, often after being arrested with excessive or indiscriminate force. Detention conditions are reported as below human rights standards set by the Geneva Conventions and the United Nations. While the International Committee of the Red Cross (ICRC) visits detainees at Bagram and Kandahar, they do not have access to individuals held at other locations. An internal Pentagon investigation of detentions in Afghanistan, conducted by Brig. Gen. Charles H. Jacoby, has been completed but the report remains classified, unlike similar reports on abuses in Iraq.<sup>4</sup>

46. The independent expert has received accounts of actions that fall under the internationally accepted definition of torture. For example, a district governor from Paktia province who was assisting the Coalition forces was arrested, gagged, hooded and taken to a base in Urgun, where he was beaten, forced to stand in a stress position for a prolonged period of time, exposed to the cold, and denied food and water. He also reported the torture and sexual abuse of up to 20 other persons. When his identity was confirmed five days later, he was released, although the fate of the other detainees remains unclear. An investigation by the Criminal Investigative Command led to a classified report obtained by a newspaper in the United States that recommends that 28 personnel be prosecuted in connection with the deaths of detainees held by United States forces. However, to date, prosecutions have been limited, raising questions about the interest of United States officials in investigating and prosecuting these cases. The independent expert also expresses serious concerns about the alleged transfer of some prisoners from Guantánamo Bay to Afghanistan as well as the process of informal rendition, whereby detainees are transferred to third-party countries where they are subjected to abuse and torture in clear violation of international human rights and humanitarian law. The Coalition forces' use of distinct units that answer to different command and control structures is dangerously permeating the Afghan military and security organizations and remains a source of serious human rights violations. In general, the Coalition forces' practice of placing themselves above and beyond the reach of the law must come to an end.

## IX. RECOMMENDATIONS

### A. Comprehensive strategic plan for rule of law, justice and human rights

47. **The Government should work with the international community to develop a comprehensive strategic plan regarding rule of law, justice, and human rights involving three fundamentals: reforms in the administration of justice to create effective institutions staffed by capable professionals who can defend and protect fundamental legal rights, including openly dealing with violations of the past; immediate actions to combat poppy cultivation and processing and drug trafficking, thereby reducing threats to stability and legal order, especially by factional commanders who are increasingly involved in organized crime; and anti-corruption policies to aid the State in defining its role as a unifying power that effectively governs through law.**

48. The international community should provide coordination, institutional support and financial backing for the comprehensive strategic plan, including the explicit support of such initiatives in future Security Council resolutions and formal linkages of these plans with the activities and development proposals of donor countries. UNAMA should continue to expand its commitment to rule of law, justice and human rights through increased monitoring, investigation and capacity-building.

#### B. Security

49. The Government should establish oversight, monitoring and accountability mechanisms for State security institutions including ANA, ANP and security and intelligence entities associated with the National Security Directorate, the Ministry of Defence and the Ministry of the Interior. The Government should consider various policy mechanisms to aid in accountability used in other countries, including the creation of independent inspectors-general, special governmental oversight commissions and ombudsmen. Moreover, the Government should establish clear lines of communication and authority between distinct entities and should clarify their respective roles and responsibilities. It is also essential that the Government improve salaries and conditions for professionals in these sectors and provide training and capacity-building.

50. Minimum standards of literacy and professional competence for all security service personnel should be established.

51. The Government and the international community should work together to ensure that all training of State security forces includes comprehensive human rights education as well as adequate reviews of basic due process protections and rule of law commitments.

52. The international community should continue to expand ISAF to improve overall security.

53. The general DDR process should be strengthened, by controlling and destroying ammunition caches throughout the country and ensuring that demobilization and reintegration are linked to alternate and sustainable employment opportunities.

54. The international community should support the Government's efforts to disarm illegally armed groups and provide assistance and backing for every stage in this complex process.

#### C. Poppy cultivation and drug trafficking

55. The anti-narcotics policy should be integrated within a comprehensive strategic plan that links economic development, appropriately designed eradication programmes, aggressive law enforcement, including interdiction, eradication and prosecutions of drug traffickers and corrupt officials, and measures that contribute to the legitimacy of the State.

56. A series of economic, banking and accounting policies to assist anti-narcotics and anti-corruption efforts should be established, including a State-controlled banking and financial system.

57. The anti-narcotics programme should provide serious and sustained alternative livelihood programmes and contribute directly to the establishment of robust rule of law institutions staffed by well-trained professionals and supported by serious, long-term capacity-building efforts.

#### D. The justice system

58. The Government should create a commission to investigate the physical, sanitary and health conditions at all national prisons, followed by a comprehensive plan to rapidly improve all detention facilities to conform with the United Nations Standard Minimum Rules for the Treatment of Prisoners. This commission should work in conjunction with a permanent national prison monitoring body, as recommended in the previous report. These activities could be established with the assistance of the international community and with the technical aid of UNAMA, UNDP, UNODC and other relevant organizations.

59. The Government should establish mechanisms to monitor the implementation of the new Code of Criminal Procedure to ensure that individuals are not held in detention for lengthy periods of time without being charged, and to prevent security and intelligence forces from holding people outside of an appropriate legal process.

60. All female prisoners held in State detention facilities for actions that do not constitute crimes under Afghan law or through unfair and discriminatory legal processes should be released. Since many of these women are in need of shelter and assistance, the Government should work with international donors to set up temporary homes and rehabilitation centres.

61. The Government should work with the international community to train public defenders to strengthen due process protections and combat inappropriate detentions and convictions, especially for vulnerable populations such as women, youth and the poor.

62. A special commission should be created linking research, public education and policy-making to integrate customary law into the formal activities of the State in a manner that builds on the basic legitimacy and public trust associated with these mechanisms of dispute resolution.

63. A national agency should be established with international technical assistance to prevent, investigate and punish acts of corruption on the part of public officials.

#### E. Social and economic issues

64. The Government should continue to work closely with the international community to address the nation's severe social and economic challenges regarding health, education, labour and related issues, including concerted efforts to assist Afghanistan in meeting the Millennium Development Goals.

65. Comprehensive policies linking legislation, open hiring policies, public education and access to a variety of services should be implemented to assist the disabled in rebuilding their lives and successfully integrating into the nation's economy and society. In addition, international institutions should make a concerted effort to hire disabled Afghans.

#### **F. Women and children**

66. The Government should continue to work closely with the international community to create comprehensive and sustainable policies to improve the situation of women and children in Afghanistan, with special attention on health, education, economic opportunities and political empowerment.

67. The Government should take firm and immediate action, including public awareness programmes, to prevent the transfer of women as compensation to the families of victims who have been killed and should take similar action against other abusive customary law practices that violate women's rights.

68. Comprehensive policies linking legislation, capacity-building, sensitization, social services and public education should be implemented to address the problems of domestic violence and violence against women.

69. The Government should continue and expand its activities to prevent child trafficking and reduce child labour.

70. Women's rights and children's rights should be explicitly considered in all aspects of policy planning and implementation.

#### **G. Land and housing**

71. Specific policy changes regarding the Special Property Disputes Resolution Court should be implemented, including increased funding, consideration of the needs of IDPs and expansion of the Court to the provinces. The Government may consider working with the international community to create new mechanisms of dispute resolution for property, land and water resource conflicts.

72. The Government and the international community should develop a focused plan to address pressing land and housing issues. The resulting comprehensive policy should involve significant investment in a rational and efficient land-titling system, as well as a significant financial commitment to the construction of new housing.

#### **H. Education**

73. As recommended in the independent expert's previous report, the Government should combine the faculties of civil law and Shariah in order to integrate secular and Islamic law in accordance with the Constitution and to train a new generation of legal professionals.

74. Continued efforts should be made to improve access to primary school education for all children and to address obstacles to universal attendance through public awareness programmes, the construction of new schools, increased teacher training, and other activities.

75. Special efforts should be made to improve literacy and basic education skills for girls and women throughout the country.

#### I. Strengthening civil society

76. The Government should continue to support the development of a robust civil society and should use legislative and other means to encourage a free press, broad access to the media, the expansion of public discourse, and the development of new social, cultural and political organizations.

#### J. National human rights institution

77. The Government should pass enabling legislation for AIHRC, as envisaged in the Constitution. The Commission should continue to receive international support and financing. In accordance with the Paris Principles, AIHRC should receive funding from the State budget, and should be encouraged to strengthen its investigative and case-handling capacity.

#### K. Transitional or post-conflict justice

78. The Government should establish a mechanism to translate the broad objectives of the AIHRC report into a comprehensive action plan on transitional justice.

79. A system of vetting should be studied, proposed and implemented to ensure that individuals responsible for past atrocities are not allowed to hold positions of governmental authority and public trust. The process should be based on similar policies in other countries, yet structured to address the specific needs of Afghan society. The system should address various levels of responsibility, including mid-level actors, and the vetting system chosen should be structured to be as administratively secure and non-confrontational as possible. The process may involve the Civil Service Commission or a newly created entity, and may benefit from the presence of international actors and assistance. Assuring integrity and maintaining public confidence in its neutrality will be important to its success.

80. A variety of symbolic actions should be taken to commemorate the suffering of victims of political violence during the past decades of conflict.

81. The Government should work with the international community, AIHRC, human rights NGOs, civil society organizations and others to study the possible value of a truth commission as part of a broad process of social reconstruction and with the goal of encouraging national reconciliation.

82. The Government should work with the international community, AIHRC, human rights NGOs and civil society organizations to study the possibility of future trials for perpetrators of past violations of human rights and humanitarian law.

#### L. Elections

83. The Government should work with the international community to make immediate plans for the parliamentary elections including resolving national population figures in a professional and transparent manner, addressing necessary changes in the electoral law, making adequate preparatory plans for voting, quickly hiring all necessary experts and staff, and setting a date for the elections.

84. The international community should provide adequate financial, logistical and administrative support for the parliamentary elections, including election observers who will formally report on their findings.

85. ISAF, ANA and ANP should coordinate their forces to ensure adequate security for the parliamentary election process.

86. Immediate preparations should be made to assist the new parliament in its legislative, managerial and administrative functions by providing publications, guidelines, capacity-building and training. In addition, a special body should be created to assist legislators in evaluating the economic and policy feasibility of new legislation and to provide comparative research regarding the legislative activities of other countries facing similar challenges.

87. A broad-based public education and awareness programme should be implemented to assist the Afghan people in understanding the voting process and structure of the new representative bodies.

#### M. Coalition forces

88. The Government should establish a formal SOFA agreement with the Coalition forces, detailing the basis for arrests, search and seizure and detentions and specifying that these activities must be in accordance with international human rights and humanitarian law. Detentions must take place in accordance with the United Nations Standard Minimum Rules for the Treatment of Prisoners, and Coalition forces should be required to abide by basic human rights standards contained in relevant United Nations instruments. In addition, detainees should be provided with some form of judicial supervision to ensure that no one is held without a valid legal basis.

89. Coalition forces should provide reasonable access to outposts to representatives of the Government, AIHRC and appropriate international entities such as ICRC, as well as competent United Nations officials, including special rapporteurs and independent experts, in order that they may evaluate conditions of detention and treatment of detainees.

#### N. Other general policy recommendations

90. A significant effort should be made by the Government and the international community to ensure that all interventions, policies, programmes and strategies related to national reconstruction, democratic consolidation and the protection and promotion of human rights are designed to maximize local participation and domestic capacity-building.

91. The Government should work in close consultation with the international community and donor countries to ensure that national reconstruction efforts are grounded in Afghan social reality, especially as regards sensitivity to regional and local needs, and designed to positively impact provincial and district areas, rather than simply major urban centres such as Kabul.

#### X. CONCLUSION

92. The people of Afghanistan have great expectations for the future of their country and the possibility of achieving security, stability, economic well-being, justice and the protection of fundamental human rights. They are increasingly sensitized to the significance of human rights issues and have engaged with great seriousness in the defence and protection of their rights, as evidenced by voter registration, electoral participation, the rapid growth of civil society organizations and other key indicators. President Karzai and his Government, the donor community, domestic and international NGOs and others consulted by the independent expert are committed to advancing the promotion and protection of human rights in Afghanistan. However, the lack of a comprehensive strategic plan regarding rule of law, justice and human rights makes it difficult for these forces to coordinate their efforts and marshal sufficient resources to adequately address these challenges. One potential danger involves the high expectations of the Afghan public, who may be disappointed if significant progress is not made quickly and in a visible manner.

93. The independent expert believes that poppy cultivation and processing and drug trafficking represents one of the most serious problems facing the country, particularly given the increasing role of factional commanders in the drug industry. The severity of the problem is heightened by their likely acquisition of significant economic power, their potential for increased militarization, and the possibility that institutionalized corruption will permeate key State structures and make serious anti-drug efforts impossible. The problem is likely to impact the stability of the country if the Government and the international community cannot quickly work together to devise a strong anti-narcotics policy that is integrated into a comprehensive strategic plan regarding rule of law, justice, and human rights and directly bound to programmes involving sustainable economic development and alternative livelihoods.

94. The removal of factional commanders and individuals associated with past human rights violations from positions of public authority must be a key government priority. This is essential in order to send a powerful message to the Afghan people regarding the importance of accountability within the newly democratic nation and as a mechanism to highlight the central role of rule of law, justice and human rights in Afghanistan.



95. National reconstruction in the wake of decades of conflict and in recognition of the historical absence of a functional centralized State is a difficult task that can only be accomplished gradually. However, as indicated in this report, there are a number of pressing issues that must be addressed in order to consolidate the political transition, guarantee the protection and promotion of human rights, and encourage and support key capacity-building initiatives. While there are some areas where immediate action may yield relatively rapid success, there are others where necessary changes will require long-term sustained commitment. The independent expert encourages the Government and the international community to work collaboratively to develop a comprehensive strategic plan regarding rule of law, justice, and human rights as a fundamental element of the larger process of national reconstruction in Afghanistan.

#### Notes

<sup>1</sup> “Factional commanders” refers to individuals who retain command and control over irregular forces that vary in size, strength and relation to ethnic and/or tribal systems, and continue to engage in violent activities that threaten or challenge the legal rule of the State.

<sup>2</sup> While the Coalition forces include troops from a number of States, this report addresses concerns relating to the activities of United States forces.

<sup>3</sup> See “*Enduring Freedom*”: *Abuses by US Forces in Afghanistan*, Human Rights Watch, March 2004; “An Open Letter to US Secretary of Defense Donald Rumsfeld” by Human Rights Watch, 13 December 2004; “US Investigates 8 Afghan Prison Deaths”, released by the Associated Press on 13 December 2004.

<sup>4</sup> Accounts in the press and by victims corroborate the common use of excessive force by United States forces at different locations, suggesting that techniques used in Afghanistan are related to general patterns of abuse developed for the “war on terrorism”, used in Iraq and Guantánamo Bay and linked to the abuse scandal at the Abu Ghraib prison. Available United States Government reports have confirmed serious violations, most recently in the report by Vice Admiral Albert Church III.

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